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IN THE

Supreme Court of the United States

October Term, 1952

No. 10 Original.

STATE OF ARIZONA,

Complainant,

vs.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, and COUNTY OF SAN DIEGO, CALIFORNIA,

Defendants.

Return of Defendants to Rule to Show Cause and Brief in Support of Return.

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Defendants.

RETURN OF DEFENDANTS TO RULE TO SHOW CAUSE.

Come now defendants above named and, in response to the Rule to Show Cause issued by this Court on October 13, 1952, in the above entitled proceeding, submit the following Return:

1. Defendants desire that the above entitled action proceed to an effective judgment on the merits.

2. A prior decision of this Court (*Arizona v. California*, 298 U. S. 558) indicates that the United States is an indispensable party to the proposed action.

3. Defendants are advised that the Acting Solicitor General of the United States has represented to this Court, by letter dated October 8, 1952, that the United

States has decided to move for leave to intervene, and that if Arizona shall be granted leave to file its bill of complaint herein, such motion will be made at the appropriate time. This return is filed in reliance upon that representation of the Acting Solicitor General.

4. Defendants therefore interpose no objection to an order granting complainant's motion for leave to file the bill of complaint.

5. All defenses, including, but not limited to, the defense that indispensable parties, particularly the United States, are not joined herein, are hereby reserved.

Respectfully submitted,

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BRIEF OF DEFENDANTS IN SUPPORT OF RETURN TO RULE TO SHOW CAUSE.

Statement of the Case.

It is not considered that, for the purposes of this return and brief, any further statement of the case is required than that stated in connection with complainant's motion.

ARGUMENT.

I.

A Serious Interstate Controversy Should Be Ended.

Defendants earnestly desire that the controversy between the states be litigated and brought to final judicial determination. That controversy, the subject matter of which is the claims of the states to rights to use the waters of the Colorado River system, has persisted in varying form throughout more than 25 years. (See complainant's statement in support of its motion; p. 3.) It is grounded principally on the fact that the two states interpret differently a series of documents and statutes which collectively have been called the "law of the River." These writings include the Colorado River Compact, 45 Stat. 1057 (1922), the Boulder Canyon Project Act, 45 Stat. 1057 (1928), the California Limitation Act, Stats. Cal. 1923, p. 38 (1929), the Boulder Canyon Project Adjustment Act, 54 Stat. 774 (1940), the Mexican Water Treaty, Treaty Series 994 (1945), and a group of water contracts executed by the Secretary of the Interior under the authority of Section 5 of the Project Act with (a) five public agencies in California (1930-1934); (b) the State of Nevada (1942-1944); and (c) the State of Arizona (1944).

At the instance of Arizona, several facets of the problem have been submitted to this Court in *Arizona v. California, et al.*, 283 U. S. 423 (1931), *Arizona v. California, et al.*, 292 U. S. 341 (1934), and *Arizona v. California, et al.*, 298 U. S. 558 (1936). Each of these cases was disposed of by the Court with opinion on preliminary proceedings.

The subject matter of the controversy has not been comprehensively treated by the Court. There is consequently a variety of unsolved problems upon the solution of which depends the economic future of the basin of the Colorado.

In addition to the Court proceedings mentioned, Arizona and California have contested in the Congress for many years over legislative measures which were not enacted by the Congress, among other reasons, because of the fact that the issues between the states are undetermined. The Secretary of the Interior, in his official report entitled "The Colorado River Basin" (House Doc. 419, 80th Cong. p. 5), states:

> "That further development of the water resources of the Colorado River Basin, particularly large-scale development, is seriously handicapped, if not barred, by lack of determination of the rights of the individual states to utilize the waters of the Colorado River system."

The controversy between the states is longstanding, grave and deep seated. Efforts to adjust it by negotiation have been made in scores of interstate conferences without avail. The only forum in which the questions at issue can be determined is that of this Court. (Const. U. S., Art. III, Sec. 2, Cl. 2.)

II.

The United States as an Indispensable Party.

Notwithstanding defendants' desire that the litigation proceed, they conceive it to be their duty to the Court to bring to the Court's attention the fact that a prior decision of this Court indicates that the United States is an indispensable party, but it is not named as a party in the proposed bill of complaint. It was on that ground that this Court refused leave to file the bill of complaint in the last case between these states (298 U. S. 558) in 1936. That case was commenced by Arizona against the other six states of the Colorado River Basin, seeking an equitable apportionment of the waters of the River. In its opinion the Court lists the following factors bearing on the interest of the United States in such a suit:

(a) The Colorado River is navigable.

(b) The privilege to appropriate and use its water is "subject to the paramount power of the United States to improve it for the purpose of navigation." (P. 569.)

(c) The Boulder Canyon Project Act authorized the Secretary of the Interior to construct Boulder Dam (now Hoover Dam). It provides for control and management of the water by the United States, and declares that this authority is conferred subject to the terms of the Colorado River Compact "for the purpose of controlling the floods, improving navigation and regulating the flow of the Colorado River, providing for storage and for delivery of the stored

waters thereof, for reclamation of public lands and other beneficial uses exclusively within the United States, and for the generation of electrical energy . . ." (P. 569.)

(d) Section 5 of the Act provides that "No person shall have or be entitled to have the use for any purpose of the water stored as aforesaid except by contract" made by the Secretary of the Interior. The Secretary had made such contracts for delivery of 5,362,000 acre-feet of stored water to California agencies. The Secretary had also made contracts for financing and construction of Parker and Imperial Dams and the All-American Canal. (P. 570.)

(e) The Court concludes, "Every right which Arizona asserts is so subordinate to and dependent upon the rights and exercise of an authority asserted by the United States that no final determination of the one can be made without a determination of the extent of the other. Although no decree entered in its absence can bind or affect the United States, that fact is not an inducement for this Court to decide the rights of the states which are before it by a decree which, because of the absence of the United States, could have no finality." (Pp. 571-572.)

On that ground the Court denied leave to file the bill.

The chief factual difference between the case above mentioned and the bill of complaint presently proposed by Arizona is that in 1936 Arizona had not attempted to

ratify the Colorado River Compact, and on the contrary had refused to do so. In addition, Arizona had made no contract with the Secretary of the Interior for water under Section 5 of the Boulder Canyon Project Act. In the present bill, Arizona alleges (p. 8) that she ratified the Compact on February 24, 1944, and on the same date (p. 19) entered into a contract with the United States under Section 5.

The present proposed bill, while not seeking an "equitable share" of the use of waters of the River system, seeks to quiet Arizona's title to the use of a given amount of water per annum. The net objective is, therefore, substantially the same as that of the prior bill.

Since 1936 the following circumstances have supervened:

(a) The United States entered into a treaty (with 11 reservations) ratifications of which were exchanged November 8, 1945, for delivery to the United Mexican States of a large quantity of water of the Colorado River system (Executive A, 78th Cong., 2nd Sess., and protocol relating thereto) and, acting through the State Department, is delivering such water.

(b) As required by the Mexican Water Treaty, the United States has constructed Davis Dam on the Colorado River between Hoover Dam and Parker Dam, in part for the purpose of metering out water to Mexico.

(c) The United States has constructed for the benefit of the Colorado River Indian Reservation, Arizona, Headgate Rock Dam and an irrigation system which diverts water from the River near Parker, Arizona. It has also completed construction of Imperial Dam and the All-American Canal for the benefit of the Imperial and Coachella Valleys in California, and the Gila Project for the benefit of the Yuma Mesa and Wellton-Mohawk areas, Arizona.

(d) The Secretary of the Interior has executed additional contracts under Section 5 of the Project Act for delivery of water from storage behind Hoover Dam with:

1. State of Nevada (1942-1944);
2. State of Arizona (1944);
3. The Wellton-Mohawk Irrigation and Drainage District, Gila Project, Arizona (1952);

The Secretary has also made amendatory and supplemental contracts as follows:

4. San Diego County Water Authority (1946);
5. Yuma County Water Users Association (1951);
6. Imperial Irrigation District (1952).

(e) The Act of June 28, 1946 (60 Stat. 338), provides:

"That for the purpose of controlling the floods, improving navigation, and regulating the flow of the

Colorado River, there is hereby authorized to be appropriated, out of any moneys in the Treasury of the United States not otherwise appropriated, for the fiscal year ending June 30, 1928, and annually thereafter, such sums as may be necessary, to be spent by the Bureau of Reclamation under the direction of the Secretary of the Interior, to defray the cost of (a) operating and maintaining the Colorado River front work and levee system in Arizona, Nevada and California; (b) constructing, improving, extending, operating and maintaining protection and drainage works and systems along the Colorado River; (c) controlling said River, and improving, modifying, straightening and rectifying the channel thereof; and (d) conducting investigations and studies in connection therewith . . . ."

The foregoing outline of the interests of the United States in the Lower Colorado River and the subject matter of the proposed suit finds ample support in the report of the Secretary of the Interior, dated May 13, 1948, and addressed to the Chairman of the Senate Committee on Interior and Insular Affairs (Hearings before Sub-Committee of Senate Committee on Interior and Insular Affairs, 80th Cong., 2nd Sess., on S. J. Res. 145, pp. 363, 367).

It is therefore indicated that, as in the 1936 case, the United States is an indispensable party to the proposed suit.

III.

The United States Has Decided to Move to Intervene.

The Acting Solicitor General of the United States, at the request of both the States of California and Arizona, has written the Clerk of the Court the following letter:

"October 8, 1952

Clerk, United States Supreme Court
Washington, D. C.

Re: State of Arizona v. State of California, *et al.*, No. Original.

Dear Sir:

It has been called to our attention that the State of Arizona has filed a Motion for Leave to File a Bill of Complaint against the State of California and certain irrigation and water districts and municipalities in California.

In view of the decision of this Court in *Arizona v. California*, 298 U. S. 558, on an earlier motion for leave to file a bill of complaint concerning water rights in the Colorado River, the question may arise as to whether the United States is an indispensable party to the new suit. In this connection it seemed advisable that the Court should be promptly notified that the interests of the United States in the questions sought to be raised are such that the United States has decided to move for leave to intervene in the pending case. Such a motion will be filed at the

appropriate time, if Arizona is granted leave to file its complaint. I would appreciate your bringing this letter to the attention of the Court.

Copies of this letter will be sent to counsel for the parties.

Sincerely yours,

ROBERT L. STERN,
Acting Solicitor General."

Defendants rely upon this letter in filing this return. They consider that the action that the United States has decided to take is eminently proper.

IV.

Defendants Therefore Do Not Oppose Complainant's Motion.

Defendants therefore interpose no objection to an order granting complainant's motion for leave to file the bill of complaint.

V.

All Defenses Are Reserved.

Under the circumstances hereinabove outlined the defendants find it necessary to reserve all defenses, including but not limited to the defense that indispensable parties are not joined herein. Obviously any judgment rendered herein should be final and controlling in the future administration of the Colorado River system. This

reservation is made so that the defendants will be at liberty to raise all issues which may be considered necessary to attain finality in the resulting decree.

Respectfully submitted,

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